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Eastern District of New York

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October 14, 2020

By ECF

Honorable Margo K. Brodie  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Federal Defenders of NY, Inc. v. Federal Bureau of Prisons, et al.*  
Civil Docket No. 19-cv-660 (Brodie, J.)(Gold, M.J.)

Dear Judge Brodie:

This Office represents Defendants Federal Bureau of Prisons (“BOP”) and the Warden of the Metropolitan Detention Center (“MDC”) in the above-referenced matter. We write pursuant to the Court’s October 2, 2020 order requiring Defendants to provide a status report ahead of the October 16, 2020 conference in this matter addressing legal access for individuals housed at the MDC and the Metropolitan Correctional Center in New York, New York (“MCC”).

#### A. The Various Forms of Legal Access Provided by the Institutions

Both institutions continue to offer in-person legal visitation. In addition, MDC and MCC continue to offer legal access by telephone and video-teleconference (VTC) every weekday, during the morning, afternoon, and evening.<sup>1</sup> These telephone calls and VTCs are intended only for those attorneys who are unable to visit their clients in person because they have extenuating circumstances that prevent them from visiting.

The MDC was unable to offer remote access on the October 12 Federal holiday due to planned, reduced staffing at the institution that day. Notwithstanding, both facilities continue to accommodate urgent call requests on an individual basis, even on holidays, as they have done since the inception of the current public health emergency. Further, in-person access was available at both the MDC and MCC throughout the holiday weekend, including on October 12. Defendants communicated their plan for holiday access to Plaintiff five days in advance, on October 7. While

<sup>1</sup> On October 6, Plaintiff reported “overflow” at the MDC consisting of: one (1) call request, which was submitted 24 hours before Federal Defenders provided their data and was not scheduled to occur until October 12; and three (3) VTC requests. As they did with respect to the small number of overflow requests reported by Plaintiff in the period covered by the last status reports, Defendants have asked Plaintiff for more information supporting the existence of any overflow, given the significant reduction in demand. With respect to both the one call and the three VTC requests, MDC has reached out to counsel to ask whether they would like an in-person visit instead.

MDC had no visitors and no requests for visitation on October 12, MCC facilitated 17 in-person visits that day.

### **B. In-Person Legal Visitation**

Since Defendants' last report, MDC facilitated 126 in-person visits, or approximately 13 visits per day. Around this time last year, there were approximately 22 in-person visits each day at the MDC, and Defendants anticipate in-person visiting will continue to increase in the coming weeks.

As discussed in Defendants' September 30 status report, MDC has undertaken substantial efforts to mitigate any risk posed by in-person visiting. Defendants continue to implement a visit-by-appointment system to ensure adequate social distancing for each visit. MDC staff conduct health screening of all attorneys upon arrival, and the East and West visiting rooms have been reconfigured with hand sanitizer and plexiglass dividers between attorney and client. The individual rooms used for attorney and client visits are cleaned between visits.

Since the last status report, the parties and the mediation team have continued to discuss the capacity and performance of MDC's HVAC system to provide assurance that the system is adequate. Additionally, MDC has conducted Cubic Feet per Minute (CFM) air exchange testing in approximately half of the attorney rooms and common spaces in the visiting rooms, and expects to complete its CFM testing tomorrow. Defendants anticipate that this testing, when complete, should provide sufficient evidence of the adequacy of MDC's airflow, and together with MDC's other efforts, demonstrate the safety of its visiting areas.

Defendants believe the mediation process continues to be helpful and we thank the Court for its consideration of this matter.

Respectfully submitted,

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